IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4499 OF 1995

Shri Vithal Rukhmni Devasthan Trust ..Petitioner.

Versus.

The State of Maharashtra & ors ..Respondent.

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None for Petitioner

Mr.C.R.Sonawane AGP for Respondent nos. 1 to 3.

Mr.H.D.Buch i/b M/s N.D.Buch for Respondent no.4

Mr.P.K.Hushing for Respondent no. 5

CORAM: A.P.SHAH AND
S.U.KAMDAR, JJ

DATE : 28TH SEPTEMBER,2004

ORAL JUDGMENT (Per A.P.Shah, J)

1. Petitioner and their Advocates are absent. Heard learned A.G.P. appearing for respondent nos. 1 to 3 and Mr.H.D.Buch for respondent no. 4 and Mr. Hushing appearing for respondent no. 5.

2. In the instant case, the petitioner and respondent no. 4 both had applied for getting permission to start a secondary school at village Kem, Taluka Karmala District Solapur. The said application was made for getting permission to start a secondary school from the year 1994-1995. It appears that even before making this application,

the petitioner started a secondary school unauthorisedly without obtaining prior permission from the authorities. It appears that permission was granted in favour of respondent no. 4 vide order dated 28th April, 1995. This order was challenged by the petitioners by filing Writ Petition No. 2356 of 1995. The Division Bench disposed of the writ petition in terms of minutes of order on 16th June, 1995. By the said order, permission to the respondent no. 4 for opening the secondary school was set aside. The Division Bench directed the State Government to give an opportunity of hearing to the respondent no. 4 and to the petitioner on their respective applications and to record the reasons for the decision to be taken.

3. Pursuant to order of the Division Bench, the petitioner and the respondent no. 4 were heard by the Minister of State for Education on 4th July, 1995. By the impugned order dated 16th August, 1995 permission was granted to the respondent no. 4 to start a new secondary school and since then the respondent no. 4 is running the secondary school in village Kem, Taluka Karmala District Solapur. On a bare perusal of the order, it is seen that the Minister of Education has considered the financial

capacity of both the institutions to run the secondary school. It was also noted by the Minister on the application filed by the petitioner that the petitioner has been running as unauthorised school in contravention of Rule 2.13 of the Secondary School Codel and in view of the breach of the Rule, it was unfair to encourage such illegal acts. Consequently, the petitioner was denied permission to open the school. We do not see any ground to interfere with the said order passed by the Minister. However, we make it clear that our order will not come in the way of the petitioner applying for the girls school and if such an application being made, the respondent nos. 1 to 3 will consider the same on its own merits and in accordance with the procedure laid down by this Court in Writ Petition No. 1772 of 1995. Writ Petition is disposed of accordingly.

A.P.SHAH,

S.U.KAMDAR, J